

## Message Text

LIMITED OFFICIAL USE

PAGE 01 MEXICO 12822 062044Z

62

ACTION L-01

INFO OCT-01 SS-14 ISO-00 ARA-06 NSCE-00 NSC-05 INR-05

CIAE-00 SCA-01 /033 W

----- 089163

P 062010Z OCT 76

FM AMEMBASSY MEXICO

TO SECSTATE WASHDC PRIORITY 7843

LIMITED OFFICIAL USE MEXICO 12822

LIMDIS

FOR L

E.O. 11652: N/A

TAGS: CASC, MX

SUBJ: US/MEXICAN AGREEMENT ON TRANSFER OF SANCTIONS

REF: BAGTS TO GAITHER COMMUNICATION, SEPTEMBER 29, 1976

FOLLOWING ARE COMMENTS ON DRAFT TEXT OF AGREEMENT:

1. ARTICLE II, PARA (3): IN LIGHT OF LANGUAGE USED IN RECENT EXTRADITION TREATIES (SEE US/SPANISH TREATY ARTICLE V, PARA 5 (TIAS 7136), EMBASSY LEGAL ADVISER RECOMMENDS WORD "PURELY" MODIFY "MILITARY LAWS". FAILURE TO DO SO COULD RAISE PROBLEMS IN FUTURE. FOR PRESENT, AS SOME ARRESTS ARE MADE BY MILITARY, IT WOULD AVOID POSSIBLE ARGUMENTS OF INAPPLICABILITY OF TREATY. LEGAL ADVISER ALSO QUESTIONS NEED AND DESIRABILITY OF LINKING DEFINITION OF "POLITICAL OFFENSE" TO THE US/MEXICO EXTRADITION TREATY. IN HIS OPINION A POLITICAL EXCLUSION CLAUSE USUALLY AND PREFERABLY STANDS ON ITS OWN FOR INTERPRETATION BY THE PARTIES WITHOUT THE NEED OR REQUIREMENT TO ESTABLISH ANY MEANING THROUGH REFERENCE.

2. ART. III, PARA (1)

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 MEXICO 12822 062044Z

(A) SUGGEST TRANSFER NOT REPEAT TRANSFER REQUIRE APPLICATION

BY OFFENDER TO AUTHORITIES OF SENDING STATE. SUCH A PROVISION IS LIKELY TO LEAD TO EXTORTION AND/OR SEVERE ADMINISTRATIVE DELAY IN MEXICO. EMBASSY RECOMMENDS APPLICATION BE RECEIVED BY EMBASSY OR CONSULATE AND TRANSMITTED ON BEHALF OF OFFENDER TO AUTHORITIES OF SENDING STATE.

(B) AGREEMENT DOES NOT CONTAIN ANY CRITERION SENDING STATE MIGHT USE TO APPROVE OR REJECT APPLICATION. EMBASSY RECOMMENDS INCLUSION OF SOME BROAD CATEGORIES OF FACTORS. PRESUME DEPARTMENT ANTICIPATED COVERING THIS MATTER IN ENABLING LEGISLATION, HOWEVER, INCLUSION OF BROAD CONCEPTS MIGHT ALLEVIATE POSSIBLE MISUNDERSTANDING BY GENERAL PUBLIC AS WELL AS TWO GOVERNMENTS WHICH MIGHT OTHERWISE HAVE DIFFERING ENABLING LEGISLATION.

3. ARTICLE III, PARA (4): EMBASSY LEGAL ADVISER IS OF THE OPINION THAT HE HAS YET TO RECEIVE A SATISFACTORY RESPONSE TO THE QUESTION OF THE POSSIBILITY UNDER MEXICAN LAW FOR TRANSFER WITH LEGAL PROCEEDINGS STILL PENDING. THE EMBASSY WOULD PREFER, ASSUMING U.S. LAW WOULD PERMIT, TO HAVE THE AGREEMENT DRAFTED IN SUCH A WAY AS TO PERMIT THE TRANSFER OF AN OFFENDER PENDING LEGAL PROCEEDINGS ON THE APPELLATE LEVEL. (IN MEXICO THIS WOULD INCLUDE APPEAL TO THE COURT OF THE "SEGUNDA INSTANCI" AND AN AMPARO TO THE SUPREME COURT. IT WOULD NOT INCLUDE AMPAROS DIRECTED AGAINST THE COURT OF THE FIRST INSTANCE AS IN THIS CASE THERE WOULD BE NO SENTENCE ON WHICH A TRANSFER COULD BE BASED.)

4. ARTICLE IV, PARA (5): EMBASSY WOULD SUGGEST THAT PHRASE, "TREATMENT OF OFFENDERS" MAY HAVE POLITICAL CONNOTATIONS AND THAT THE OBJECT COULD BE MET WITH ANOTHER PHRASE, SUCH AS "STATUS OF CONFINEMENT OF OFFENDERS."

5. ARTICLE V, PARA (2): QUESTION WHETHER IT WOULD NOT BE PREFERABLE TO USE WORD "REMANDED" RATHER THAN "SET ASIDE". EMBASSY OF OPINION TRANSLATION AND USE OF "SET ASIDE" IN MEXICAL LEGAL CONTEXT WILL INFER FINDING OF INNOCENCE AND THUS RAISE QUESTIONS OF DOUBLE JEOPARDY.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 MEXICO 12822 062044Z

6. MISCELLANEOUS:

(A) THE QUESTION OF THE APPLICABILITY OF THE AGREEMENT TO SECOND OFFENDERS APPEARS TO BE BASIC TO TRANSFER. DEPARTMENT MAY WISH CONSIDER A SPECIFIC CLAUSE ON THIS POINT.

(B) DURING DISCUSSIONS ON SEPTEMBER 14 QUESTION OF

DOUBLE JEOPARDY WAS RAISED. U.S. SIDE INDICATED A  
CLAUSE SIMILAR TO EXTRADITION CLAUSE FOR THE SUBJECT WOULD  
BE INCLUDED. MEXICAN SIDE INDICATED A STRONG PREFERENCE  
FOR SUCH A CLAUSE. EMBASSY SUGGESTS CONSIDERATION OF  
AN ADDITIONAL ARTICLE ON PROVISION TO INCORPORATE  
THIS CONCEPT.  
JOVA

LIMITED OFFICIAL USE

NNN

## Message Attributes

**Automatic Decaptioning:** Z  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** EXTRADITION, AGREEMENT DRAFT  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 06 OCT 1976  
**Decaption Date:** 28 MAY 2004  
**Decaption Note:** 25 YEAR REVIEW  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** coburnhl  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1976MEXICO12822  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
**Film Number:** D760377-0719  
**From:** MEXICO  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1976/newtext/t19761077/aaaacoup.tel  
**Line Count:** 122  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Office:** ACTION L  
**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** LIMDIS  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 3  
**Previous Channel Indicators:** n/a  
**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** LIMDIS  
**Reference:** n/a  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** coburnhl  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 26 JUL 2004  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <26 JUL 2004 by SmithRJ>; APPROVED <03 NOV 2004 by coburnhl>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
04 MAY 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** US/MEXICAN AGREEMENT ON TRANSFER OF SANCTIONS  
**TAGS:** CASC, MX  
**To:** STATE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006